

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OLIVIA THOMPSON,

Plaintiff,

CASE NO. 2:14-CV-10620
JUDGE PAUL D. BORMAN
MAGISTRATE JUDGE PAUL J. KOMIVES

PANOS X FOODS, INC.
and RED OLIVE COMPANY,

Defendants.

**ORDER (a) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
FOR PROTECTIVE ORDER (Doc. Ent. 32) & PLAINTIFF'S MOTION FOR
SANCTIONS FOR DEFENDANTS' FAILURE TO APPEAR FOR DEPOSITION (Doc.
Ent. 34) AND (b) CANCELLING HEARING NOTICED FOR NOVEMBER 25, 2014**

A. Plaintiff's first amended complaint

This case was originally filed on February 10, 2014. Doc. Ent. 1. On March 13, 2014, plaintiff Olivia Thompson filed a first amended complaint (Doc. Ent. 4) against defendant Panos X Foods, Inc., doing business as Red Olive X, and Red Olive Company. The alleged facts underlying the complaint stem from plaintiff's January 2013 employment as a waitress and conclude with the August 1, 2013 termination of plaintiff's employment. Doc. Ent. 4 ¶¶ 7-21. The causes of action are (I) sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and (II) retaliation in violation of Title VII of the Civil Rights Act of 1964. Doc. Ent. 4 ¶¶ 22-32.

Defendants Panos X Foods, Inc. and Red Olive Company filed an answer on April 2, 2014. Doc. Ent. 9.

B. Fed. R. Civ. P. 30(b)(6) depositions of Miri Florjan¹ and Dilip KC²

In an electronic mail dated August 25, 2014 at 3:46 p.m., defense counsel proposed the deposition of Miri Florjan to take place at 3 p.m. on October 9, 2014 and the deposition of KC Dilip to take place at 10 a.m. on October 14, 2014. Doc. Ent. 32-1 at 2; Doc. Ent. 36-1 at 1. At 3:56 p.m., plaintiff's counsel's office electronically mailed that plaintiff's counsel would like to begin Miri Florjan's deposition at 10 a.m., anticipating that it would take an entire day. At 6:37 p.m., defense counsel responded, "he cooks every day and can't start until after lunch. I can move him up to 2:30 and we can go as long as she [attorney Caitlin E. Malhiot] needs. Remind her she needs to hire an interpreter[.]" Doc. Ent. 36-1 at 2.

On September 8, 2014, plaintiff noticed the Fed. R. Civ. P. 30(b)(6) depositions of Miri Florjan and Dilip KC. Doc. Ent. 34 at 21, Doc. Ent. 36-1 at 7. Specifically, Florjan's deposition was noticed for October 7, 2014 at 10 a.m. at defense counsel's office in Novi, Michigan (Doc. Ent. 34 at 22-23) and KC's deposition was noticed for October 8, 2014 at 10 a.m. (Doc. Ent. 34 at 24-25).

By way of a September 11, 2014 letter, defense counsel informed plaintiff's counsel's office that Florjan's deposition cannot begin until 2:00 p.m. or later, explaining that Florjan "has to cook breakfast and lunch at the restaurant." However, defense counsel also stated, "[t]he deposition can continue as long as needed by you." Defense counsel also proposed dates of October 1st, 2nd, 22nd or 23rd. Moreover, defense counsel reminded plaintiff's counsel's office

¹According to defendant Panos X Foods, Inc., "Miri Florjan is not only the full-time manager of the St. Clair Shores restaurant, he is also one of three cooks to cook[] during the lunch-hour rush." Doc. Ent. 32 ¶ 8.

²According to the Department of Licensing and Regulatory Affairs Profit Corporation Information Updates from 2013 and 2012, Dilip KC is the Secretary and Vice-President of Panos X Foods, Inc. Doc. Ent. 34 at 29-30.

that it would need to provide interpreters for Florjan and KC. Doc. Ent. 32-1 at 1, Doc. Ent. 34 at 27, Doc. Ent. 36-1 at 3.

On October 1, 2014 at 3:35 p.m., defense counsel electronically mailed plaintiff's counsel, informing her that he "need[ed] to be in the Oakland County Circuit Court next Wednesday [October 8, 2014] morning. . . . We need to move KC's dep to 1:00 on that same day. I am sure I will be out of court in time to be at your office by 1. Please confirm[.]" Doc. Ent. 36-1 at 4. At 4:47 p.m. that day, plaintiff's counsel's office electronically mailed a new deposition notice for Dilip KC, seemingly for 11:30 a.m. on October 8, 2014. At 4:52 p.m., defense counsel responded, "Thank you, however, 11:30 is pushing it considering that it is a domestic motion and I need to go before FOC before I get to the judge.. and .. it is a half hour back to the office. As long as you understand that you may have to wait, 11:30 is ok." Doc. Ent. 36-1 at 5.

On October 7, 2014 at 9:21 a.m., defense counsel's office electronically mailed plaintiff's counsel and stated:

A court reporter just called to confirm a deposition for today at 10:00 a.m. She was looking for our office. Please see attached letter dated September 11th where we stated that Miri was available on October 1st, 2nd, 22nd and 23rd. We told your office that he was not available today.

Doc. Ent. 36-1 at 6.

C. Pending motions

1. Currently before the Court is defendants' October 7, 2014 motion for protective order (Doc Ent. 32), filed at 9:57 a.m., wherein defendants seek entry of a protective order "requiring Plaintiff not to schedule Miri Florjan's deposition until after 2:00PM." Doc. Ent. 32 at 5.

Plaintiff has filed a response (Doc. Ent. 33).

2. Also before the Court is plaintiff's October 13, 2014 motion for order imposing sanctions for defendants' failure to appear for deposition (Doc. Ent. 34), wherein plaintiff requests:

. . . that this Court impose sanctions on Defendants, including precluding Florjan and KC from testifying in this action, whether in person or by declaration or affidavit, and requiring Defendants to pay Plaintiff's costs incurred in appearing for the depositions. Plaintiff also requests that Defendants be ordered to pay Plaintiff's expenses, including reasonable attorney fees, incurred in obtaining the relief sought herein.

Doc Ent. 34 at 5.

Defendants' have filed a response (Doc. Ent. 36).

3. Judge Borman has referred these motions to me for hearing and determination. Doc. Ent. 38. The deadline for a statement of resolved/unresolved issues was set for November 20, 2014, and a hearing was noticed for November 25, 2014. Doc. Ent. 39.

Plaintiff's November 20, 2014 statement of resolved/unresolved issues simply states, "None of the issues pending in the motion have been resolved." Doc. Ent. 40.

D. Order

Upon consideration, defendants' October 7, 2014 motion for protective order (Doc. Ent. 32) and plaintiff's October 13, 2014 motion for order imposing sanctions for defendants' failure to appear for deposition (Doc. Ent. 34) are GRANTED IN PART and DENIED IN PART as follows:

- Miri Florjan's deposition shall not commence before 2:00 p.m. As counsel are aware, "[u]nless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours." Fed. R. Civ. P. 30(d)(1). Mindful of plaintiff's assertion that counsel and the court reporter would be considerably inconvenienced by continuing a deposition late into the night, plaintiff's counsel may either conduct Florjan's deposition in one day or continue the deposition, for however many of the 7 hours remain, on another day at 2:00 p.m. or later.

- Plaintiff or defendants, or both parties, may have a translator present at the depositions of Miri Florjan and Dilip KC. However, the parties shall bear their own costs for such services.
- The parties' various requests for costs, fees, expenses and/or sanctions (*see* Doc. Ent. 32 ¶ 21, Doc. Ent. 33 at 6, Doc. Ent. 34 at 5, Doc. Ent. 36 at 10) are DENIED.

Additionally, the hearing noticed for November 25, 2014 is (Doc. Ent. 39) is CANCELLED.

IT IS SO ORDERED.

The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

/s/ Paul J. Komives

PAUL J. KOMIVES

UNITED STATES MAGISTRATE JUDGE

Dated: November 21, 2014

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 21, 2014, by electronic means and/or ordinary mail.

/s/Holly A. Monda

Acting in the absence of Michael Williams